

**MACKINAC STRAITS CORRIDOR AUTHORITY (MSCA)**  
**PUBLIC MEETING**

October 13, 2021 – 10:00 am

In-Person/Virtual Meeting ([Mackinac Straits Corridor Authority Meeting 10-13-2021 - YouTube](#))

**MEETING MINUTES**

Members Present: Mike Nystrom, MSCA  
Anthony England, MSCA  
Paul Novak, MSCA

Members Absent: None

Also Present: Raymond Howd, Assistant Attorney General to MSCA  
Dr. Mike Mooney, Consultant to MSCA  
Peter Holran, Enbridge  
Aaron Dennis, Enbridge  
Guy Krepps, Enbridge  
Amber Pastoor, Enbridge  
Monica Monsma, MDOT  
James Lake, MDOT  
Corey Petee, MDOT  
Randy Debler, MDOT  
Ryan Mitchell, MDOT  
Margaret Barondess, MDOT  
Cindy Robinson, MDOT  
Carrie Bates, MDOT  
Amy Matisoff, MDOT

**I. WELCOME/Call to Order**

Mackinac Straits Corridor Authority (MSCA) Chairman Michael Nystrom opened the meeting at 1:03 p.m. and welcomed attendees, guests, and other Authority members Anthony England and Paul Novak. Chairman Nystrom outlined the meeting agenda and public comment function, stating that individuals must sign-up for public comment, and then those individuals will be announced in order for public comment presentations. A public comment form was made available for use of written comments. Public comments will be limited to three minutes, with MDOT staff monitoring time, and anyone going over the time allowable will be given a notification. All comments will be part of the public record of this meeting.

**II. APPROVAL OF AGENDA**

Chairman Nystrom called for a Motion to Approve the Agenda. Motion by Anthony England. Seconded by Paul Novak. 3 ayes, 0 nays. Motion carried.

**III. APPROVAL OF PREVIOUS MINUTES**

Chairman Nystrom called for a Motion to Approve June 2, 2021 Meeting Minutes. Motion by Anthony England to accept the minutes. Seconded by Paul Novak. 3 ayes, 0 nays. Motion carried.

**IV. OLD BUSINESS**

None.

**V. NEW BUSINESS**

A. Proposed MSCA Tribal Consultation Policy – Raymond O. Howd, Special Assistant Attorney General; Amy Matisoff, MSCA Tribal Affairs Coordinator

Amy Matisoff and Ryan Mitchell worked with Special Assistant Attorney General, Ray Howd, to draft a Tribal consultation Policy for the MSCA. This draft policy is narrowly drawn from MDOT's existing Tribal Consultation Policy, specifically to address the tunnel project. Paragraph two of the draft policy mirrors the MDOT policy that has been put in place, along with the Governor's Executive Order. The other sections of MDOT's Tribal Policy are not applicable to the Authority. Amy Matisoff contacted all 12 Federally Recognized Tribes in Michigan, requesting consultation regarding the MSCA's sole project, the Utility Tunnel. Two consultation meetings have already occurred with the Gun Lake Tribe and Bay Mills Indian Community. During consultation with Bay Mills, they requested the opportunity to review the Enbridge draft RFP and would like 45 days to review before any action by the Authority is taken. At this time, the Authority will table their formal approval of the consultation policy until all comments have been received and distributed from Raymond Howd to the Authority for review prior to the February 2022 meeting.

B. Response to Request for Internal MSCA Investigation - Raymond O. Howd, Special Assistant Attorney General

During the stakeholder information meeting on September 20<sup>th</sup>, Sean McBrearty, coordinator of Oil and Water Don't Mix, made public comments, and gave a letter to Authority Members. This letter raises concerns that need to be addressed because of their potential seriousness. Raymond Howd has drafted a memorandum documenting his findings following his review of that letter. Based on his legal research this is a privileged attorney/client document and Special Assistant Howd does not have the authority to release it or waive that privilege; however, the Authority may take a vote on that prior to Special Assistant Howd releasing the contents of his findings.

Member Anthony England Motioned to waive attorney/client privilege of the letter and to release the findings of Special Assistant Attorney General Raymond Howd. Seconded by Member Paul Novak. 3 ayes, 0 nays. Motion carried.

The letter and findings will be made public on the Authority website.

C. Project Milestones Met, Submittals Received – Mike Mooney, Consultant to the Authority; Raymond O. Howd

Dr. Mike Mooney, Tunnel Consultant to the Mackinac Straits Corridor Authority, joined the meeting virtually from Detroit, Michigan. Dr. Mooney's slide presentation addressed items a, b, and c below. The slides summarized a detailed review conducted by himself, MDOT MSCA Project Manager Ryan Mitchell, and MSCA Legal Counsel Raymond Howd. The presentation is primarily focused on review of the RFP which began in May 2021. The RFP review employed a comment resolution process which is a very common approach used in engineering and infrastructure projects. Bi-weekly meetings were held with Enbridge and consultants working through comment resolution on the RFP. The initial RFP was provided in the read only data site beginning in May and then went through approximately three iterations of comment review, discussion, and resolution. All comments by Mooney, Mitchell and Howd were satisfactorily addressed.

a. Amended Draft Procurement and Execution Plan

Tunnel Agreement, Section 7.5A required Enbridge to submit for MSCA review a Draft Procurement and Contract Execution Plan, which was submitted on April 30, 2019, and now an Amended Plan has been submitted. Dr. Mooney described the history and background of the original Plan that was submitted and then the Amended Plan, which includes a transition to a design-bid-build delivery model wherein the design is now complete, and the bid-build portion remains. The amended Plan Part (a), Part (b) and Part (c) meets the Tunnel Agreement requirements and has been found to be consistent with tunnel construction preparation and practice.

b. RFP for Construction of the Tunnel

Dr. Mooney reviewed and discussed in detail Enbridge's draft RFP to construct the Great Lakes Tunnel Project (GLTP), which is comprised of the following components:

☐ Instruction to Proponents, including the RFP Data Sheet.

This sets forth the components of the RFP, the procedure that proponents must follow, and summarizes the evaluation and selection process. This also includes construction of the tunnel, pipeline, tunnel systems, shore stations, project descriptions, formal communication procedures, meetings, and site visits.

• Appendix A: Proposal Format and Contents.

This identifies proposal requirements including proposal submission forms, technical responses, commercial responses, and alternate technical concepts (ATC).

• Appendix B: Proposal Submission Acknowledgement Form.

This form requires proponents to acknowledge and agree to be bound by and comply with the terms and conditions of the RFP.

• Appendix C: Technical Requirements Document.

This includes questions and requests for information regarding capabilities, project experience, quality management, innovation, resource and capacity assurance, diversity and local/indigenous group hiring, health and safety, level of service, transition management, product capacity and company profile.

- Appendix D: Commercial Requirements Document.  
This is a list of twelve questions and requests for information pertaining to proponent pricing.
- Appendix E: Contract (multiple documents).  
This contains the Tunnel Construction Agreement (TCA) between Enbridge and contractor, including subsurface conditions.
- Appendix F: Other Documents.  
This includes six reference information including the Tunnel Agreement, project risk register template, total dissolved solids lab test results, and pipeline commissioning agent scope of work.

Amber Pastoor, Enbridge, from Calgary, Alberta, Canada, joined virtually to provide Authority members with additional information on the regulatory permits filed by Enbridge for construction of the project.

There have been three major applications filed:

- the Michigan Public Service Commission (MPSC) permit;
- the Michigan Department of Environment, Great Lakes and Energy (EGLE) permit; and
- the Army Corps of Engineers permit

The RFP states any of the successful contractors must comply 100 percent with every condition outlined within each of those permits. There are penalties for permit violations in place in the RFP. A National Pollutant Discharge Elimination System (NPDES) permit has been issued by EGLE. This Federal permit falls under the Clean Water Act. Authority member Novak requested a copy of the NPDES permit, to review the environmental conditions within the permit. Ryan Mitchell, MDOT, previously provided Authority members a copy, but member Novak was not part of the Authority at that time. In addition to providing a copy, Mr. Mitchell will provide a cross-reference hyperlink on the MSCA website to the EGLE permit site so that the public may access it.

Legal Counsel Raymond Howd and Dr. Mike Mooney find the RFP meets the Tunnel Agreement requirements. Authority Members decided to table the RFP approval until the February 2022 meeting.

**c. Revised Joint Project Specifications**

In May 2021, Enbridge requested minor revisions to the Jointly-Developed Project Specifications. Most of these revisions are editorial in nature. Other revisions include the addition of excavation and backfill material specifications, removal of

American Society for Testing and Materials (ASTM), modification for stainless steel bolts and retrofitting waterstops. All of these are viewed as acceptable revisions.

**d. Third-Party Utilities**

There has been little progress with the two interested third parties. The Authority will draft a third-party agreement. Special Assistant Attorney Raymond Howd has started a draft document; however other MSCA matters have taken priority. Special Assistant Howd noted there has been some discussion with Peninsula Fiber Network (PFN). Mr. Howd will report more at the February 2022 meeting.

There has been discussion on fiber companies utilizing the tunnel; however there has not been much discussion on electrical company use. There are design elements and space proofing that will be constructed in standard locations within the tunnel. The tunnel design will accommodate third-party utilities, including electrical or fiber optic cable, and are included in the design specifications. There is a way for high-voltage electrical lines to be pulled through the tunnel and this has been examined at the cursory level; however, until Enbridge is approached by an electrical company interested in doing this, specific details have not yet been discussed.

**D. Authority Member Comments**

Member Paul Novak inquired whether the MSCA has any authority over the existing Line 5. Assistant Attorney General Raymond Howd stated no. MSCA is a statutory authorized board and not a regulatory agency. The MSCA has no legal authority and therefore would only be able to offer a statement regarding Line 5.

During the discussion of the RFP alignment with an Independent Quality Assurance (IQA) contractor and ownership transfer of the Tunnel to the State, the Authority requested from MDOT a draft Memorandum of Agreement (MOA) which would be submitted and reviewed prior to the Authority's February 2022 meeting. Ryan Mitchell, MDOT, stated this would require input and communication to/from both MDOT staff and Enbridge. Ryan will investigate the logistics of this and provide the Authority a draft as soon as possible.

Member Novak expanded on the obligations, interaction, and method of communications with Enbridge particularly regarding the FOIA request submitted by Oil and Water Don't Mix addressing the RFP and the resolution to the request. The Authority did not have any of the drafts because they were maintained entirely on a website portal that was under the control of Enbridge that enabled the Authority staff to make comments and request revisions, but in a manner that didn't allow the Authority staff to have physical access to those documents. Member Novak stated that documents that form the basis of decisions that the Authority makes must be in the possession of the Authority. The public should similarly have access to documents that

have an underlying documentary record under FOIA for the same reasons. It was suggested to Enbridge to take the documentary records within their website portal and make them available to the Authority as part of the public record prior to the February meeting when the Authority is scheduled to vote on the compliance of Section 7.5 in the RFP. This will assist the Authority in transparency and make it more compliant in its obligations under FOIA and allows accessibility to documents. Enbridge does have a concern that some documents include business confidential and/or proprietary information. FOIA does enable a company that interacts with other companies to invoke trade secret exceptions and confidentiality in some circumstances and still allow the necessary parties access to the documents.

## **VI. PUBLIC COMMENT**

- A. The public is encouraged to address Authority members at this time. Each member of the public is limited to three (3) minutes. Written public comment to the MSCA may be submitted via the [MSCA Public Comment Form](#).

Monica Monsma, MDOT, coordinated the public comments that were heard. Public comments are not question and answer periods for Authority members and there will not be a response provided from Authority members; however public comments will be taken under advisement for consideration. Nineteen individuals signed up to give public comment; however only 18 actually presented: Full list is attached to these minutes, in order of presentations. Two individuals submitted written comments, which are also attached.

## **VII. ADJOURN**

With no further business at hand, Chairman Nystrom called for Motion to Adjourn. Motion by Anthony England. Seconded by Member Novak. Motion Carried.

Meeting adjourned at 1:25 p.m.

Minutes taken by:  
Cindy Robinson  
Senior Executive Management Assistant  
MDOT Bureau of Development

Approved: \_\_\_\_\_

## Mackinac Straits Corridor Authority Public Meeting

10/13/21

Little Bear Arena, St. Ignace, MI

### COMMENT FORM

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**Please return this form before you leave or mail, fax or e-mail it by November 13, 2021 to:**

Monica Monsma, Public Hearings Officer

Michigan Department of Transportation

425 W. Ottawa, P.O. Box 30050

Lansing, MI 48909

Fax: 517-335-4381

E-mail: [MonsmaM@michigan.gov](mailto:MonsmaM@michigan.gov)



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Get Involved! Your comments are important.

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**Please return this form before you leave or mail, fax or e-mail it by November 13, 2021 to:**

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